IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

1) CIVIL APPLICATION NO.965/2006 IN F.A.NO.1698/2003
2) CIVIL APPLICATION NO.966/2006 IN F.A.NO.1700/2003
AND
3) CIVIL APPLICATION NO.967/2006 IN F.A.NO.1701/2003.

Mr.Clemant John D'Souza. ... Appellant.
Versus.
The Municipal Corporation of
Greater Mumbai. ... Respondent
And
Mrs.Meena w/o.Shamdas Gurnani. ... Applicant-Imtervenor
And
Arjun Singh Rathod. ... Prop. Respondent No.2.

Shri V.S.Kapse for the Applicant-Intervenor.

Shri J.Xavier for the Respondent-BMC.

CORAM : ABHAY S.OKA, J.

DATED : 10th April, 2006.

P.C.:

1. The prayer in this application is for setting aside the order dated 14th December 2005 passed by this court in First Appeal No.1698 of 2003 and other two connected Appeals. Heard Shri Kapse for the Applicant. A perusal of the order dated 14th December 2005 passed by this Court in the First Appeals shows that the Appeals have been permitted to be withdrawn and therefore ad-interim order passed in the Civil Applications for interim relief have been vacated.

2. Shri Kapse states that as a result of withdrawal of the Appeals, the Applicant's structure has been

demolished by the B.M.C. and therefore, the Applicant is entitled to apply for restoration of the Appeal.

3. It is not in dispute that the present Applicant is not a party to the suit in which the decree subject matter of the First Appeal was passed and the Applicant is also not a party to the Appeal. In view of this position, the present Applicant is not entitled to apply for restoration of the Appeals which are voluntarily withdrawn by the Appellant.

4. If according to the case of the Applicant, the structure in question has been illegally demolished by the Respondent-Corporation, it is for the Applicant to take appropriate proceedings in that behalf in accordance with law.

5. Subject to what is stated above, the Applications are rejected.

6. Shri Kapse states that in these applications there is a prayer for restoration of the structure in dispute. As I have held that the Applicant has no right to apply for restoration of the Appeals, notwithstanding the prayer made in this Application, the Applicant can always adopt appropriate proceedings for restoration of the structure.

Judge.